

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AARON HAHN,

Plaintiff,

v.

DOUG WADDINGTON, et al.,

Defendants.

CASE NO. 14-5047 RJB/KLS

ORDER ON REPORT AND
RECOMMENDATION

This matter comes before the Court on the Plaintiff's Motion for Appointment of Counsel (Dkt. 43) and the Report and Recommendation of U.S. Magistrate Karen L. Strombom (Dkt. 32). The Court has considered the Motion for Appointment of Counsel (Dkt. 43), the Report and Recommendation, Plaintiff's Objections to the Report and Recommendation (Dkt. 33), Defendants' Response to the Objections (Dkt. 35), and remaining record.

In this civil rights case, Plaintiff alleges that Defendants were deliberately indifferent to his mental health when they sent him to the Washington State Penitentiary and failed to protect him from and an inmate on inmate assault. Dkt. 19.

1 The Report and Recommendation recommends dismissal of the case because the statute
2 of limitations prevents consideration of the claims and Plaintiff has made no showing that he is
3 entitled to equitable tolling. Dkt. 32. Plaintiff filed Objections (Dkt. 33) and the Defendants
4 responded to those objections (Dkt. 35). After the Report and Recommendation was filed,
5 Plaintiff filed a Motion for Appointment of Counsel. Dkt. 34.

6 **Motion for Appointment of Counsel.** Under 28 U.S.C. § 1915(e)(1), the court may
7 request an attorney to represent any person unable to afford counsel. Under Section 1915, the
8 court may appoint counsel in exceptional circumstances. *Franklin v. Murphy*, 745 F.2d 1221,
9 1236 (9th Cir. 1984). To find exceptional circumstances, the court must evaluate the likelihood
10 of success on the merits and the ability of the plaintiff to articulate the claims pro se in light of
11 the complexity of the legal issues involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.
12 1983).

13 Plaintiff's motion for appointment counsel (Dkt. 34) should be denied. Plaintiff has not
14 shown that he is likely to succeed on the merits. Plaintiff has not shown he is unable to articulate
15 the instant case's claim pro se. He is able to state his positions adequately and raise issues to the
16 court. His motion should be denied.

17 **Report and Recommendation.** For the reasons provided therein, the Report and
18 Recommendation (Dkt. 32) should be adopted and the case dismissed with prejudice. Plaintiff's
19 objections are addressed in the Report and Recommendation and do not provide a basis for
20 rejecting the Report and Recommendation. Furthermore, Plaintiff's argument, that he is entitled
21 to tolling, is without merit. As stated in the Report and Recommendation, Plaintiff has not
22 shown that his failure to comply with the statute of limitations was caused by bad faith,
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1 deception, or false assurances by the Defendants. His claims should be dismissed because they
2 are barred by the statute of limitations.

3 It is **ORDERED** that:

- 4 • Plaintiff's Motion for Appointment of Counsel (Dkt. 34) **IS DENIED**;
- 5 • The Report and Recommendation (Dkt. 32) **IS ADOPTED**; and
- 6 • The case **IS DISMISSED WITH PREJUDICE**.

7 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Karen L.
8 Strombom, all counsel of record, and to any party appearing *pro se* at said party's last known
9 address.

10 Dated this 6th day of January 2015.

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12 ROBERT J. BRYAN
13 United States District Judge
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